

AMENDED IN ASSEMBLY JUNE 15, 2000

AMENDED IN SENATE MAY 18, 2000

AMENDED IN SENATE MAY 3, 2000

AMENDED IN SENATE MARCH 23, 2000

SENATE BILL

No. 1599

Introduced by Senator Bowen

February 18, 2000

An act to amend Section 637.5 of the Penal Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1599, as amended, Bowen. Privacy: video providers.

Existing law prohibits, with prescribed exceptions, a person who owns, controls, operates, or manages a cable television corporation or leases channels on a cable system from using electronic devices to observe, listen to, record, or monitor events or conversations inside a subscriber's residence, workplace, or place of business without the subscriber's written consent. Existing law also prohibits that person from providing any other person with individually identifiable information, as specified, regarding any subscriber.

This bill would make the above provisions applicable to a video provider, which it would define as a person, company, or service that provides video programming services to a residence, as defined, for a fee, as specified. *The bill also would specify persons or entities that are not considered video providers.* Since a violation of these provisions is among other

things, a crime, the bill would impose a state-mandated local program by expanding *the definition of a crime*.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 637.5 of the Penal Code is
2 amended to read:

3 637.5. (a) No person who owns, controls, operates, or
4 manages a video provider, or who leases channels from a
5 video provider shall:

6 (1) Use any electronic device to record, transmit, or
7 observe any events or listen to, record, or monitor any
8 conversations which take place inside a subscriber's
9 residence, workplace, or place of business, without
10 obtaining the express written or electronic consent of the
11 subscriber. A video provider may conduct electronic
12 sweeps of subscriber households to monitor for signal
13 quality.

14 (2) Provide any person with any individually
15 identifiable information regarding any of its subscribers,
16 *collected in the course of providing video provider*
17 *services*, including, but not limited to, the subscriber's
18 television viewing habits, shopping choices, interests,
19 opinions, energy uses, medical information, banking data
20 or information, or any other personal or private
21 information, without the subscriber's express written or
22 electronic consent.

23 (b) Individual subscriber viewing responses or other
24 individually identifiable information derived from
25 subscribers may be retained and used by a video provider
26 only to the extent reasonably necessary for billing
27 purposes and internal business practices, and to monitor



1 for unauthorized reception of services. A video provider
2 may compile, maintain, and distribute a list containing
3 the names and addresses of its subscribers if the list
4 contains no individually identifiable information other
5 than the subscriber's name and address, and if subscribers
6 are afforded the right to elect not to be included on those
7 lists. A video provider shall maintain adequate safeguards
8 to ensure the physical security and confidentiality of any
9 subscriber information that is in their possession, custody,
10 or control.

11 (c) A video provider shall not make individual
12 subscriber information available to government agencies
13 *without the subscriber's consent* in the absence of legal
14 compulsion, including, but not limited to, a court order or
15 subpoena. Prior to responding to that legal request, the
16 video provider shall notify the subscriber of the nature of
17 the request and the governmental agency that has
18 requested the information, unless otherwise prohibited
19 by law from doing so.

20 Nothing in this section shall be construed to prevent
21 local franchising authorities from obtaining information
22 necessary to monitor franchise compliance pursuant to
23 franchise or license agreements. However, this
24 information shall be provided so as to omit individually
25 identifiable subscriber information. Information
26 obtained by local franchising authorities shall be used
27 solely for monitoring franchise compliance and shall not
28 be subject to the California Public Records Act (Chapter
29 3.5 (commencing with Section 6250) of Division 7 of Title
30 1 of the Government Code).

31 (d) Any individually identifiable subscriber
32 information gathered by a video provider shall be made
33 available for subscriber examination within 30 days of
34 receiving a request by a subscriber to examine the
35 information on the premises of the corporation *or*
36 *through another reasonable mechanism*. Upon a
37 reasonable showing by the subscriber that the
38 information is inaccurate, a video provider shall correct
39 the information within 30 days and shall send written *or*
40 *electronic* confirmation to the subscriber.

1 (e) Upon a subscriber's application for video provider
2 service, including, but not limited to, interactive service,
3 a video provider shall provide the applicant with a
4 separate notice in an appropriate form explaining the
5 subscriber's right to privacy protection afforded by this
6 section.

7 (f) As used in this section:

8 (1) "Video provider" means any person, company, or
9 service that provides one or more channels of video
10 programming to a residence, including a home,
11 condominium, apartment, or mobilehome, where a fee is
12 paid *specifically* for that service *by the subscriber*,
13 whether directly or included in dues or rental charges,
14 regardless of the method used to deliver the video
15 programming. A "video provider" shall include, but not
16 be limited to, a provider of cable television, master
17 antenna television, satellite master antenna television,
18 direct broadcast satellite, multipoint distribution service,
19 and any other method of providing video programming
20 regardless of the technology used. A video provider shall
21 not include an Internet service provider unless that
22 Internet service provider is directly providing video
23 ~~programming~~ *provider services. A video provider shall*
24 *not include a person, company, or service that provides*
25 *other services and where any video content provided is*
26 *merely ancillary to the primary services, such as a video*
27 *tutorial on how to use a product or service, or a video*
28 *promotional piece.*

29 (2) "Individually identifiable information" means any
30 information identifying a subscriber or his or her use of
31 any service provided by a video provider, other than the
32 fact that the individual is a subscriber. *"Individually*
33 *identifiable information" shall not include anonymous,*
34 *aggregate, or any other information that does not identify*
35 *an individual subscriber of a video provider service.*

36 (3) "Person" means an individual, business,
37 association, partnership, corporation, limited liability
38 company, or other legal entity, or an individual acting or
39 purporting to act for or on behalf of any government, or
40 subdivision thereof, whether federal, state, or local.

(4) “Interactive service” means any service offered by a video provider involving the collection, reception, aggregation, storage, or use of electronic information transmitted from a subscriber to any other receiving point under the control of the video provider, or vice versa.

(5) “Subscriber” means an individual who purchases and receives video provider services.

(g) Nothing in this section shall be construed to limit the ability of a video provider to market video provider services or ancillary services to its subscribers.

(h) Any person receiving subscriber information from a video provider shall be subject to the provisions of this section.

(i) Any aggrieved person may commence a civil action for damages or injunctive relief for invasion of privacy against any video provider, service provider, or person that leases a channel or channels from a video provider that violates the provisions of this section.

(j) Any person who violates the provisions of this section is guilty of a misdemeanor punishable by a fine not exceeding three thousand dollars (\$3,000), or by imprisonment in the county jail not exceeding one year, or by both a fine and imprisonment.

(k) The penalties and remedies provided by subdivisions (i) and (j) are cumulative, and shall not be construed as restricting any penalty or remedy, provisional or otherwise, provided by law for the benefit of any person, and no judgment under this section shall preclude any person from obtaining additional relief based upon the same facts.

(l) The provisions of this section are intended to set forth minimum state standards for protecting the privacy of subscribers to ~~video-provider~~ *cable television* services and are not intended to preempt more restrictive local standards.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred

1 because this act creates a new crime or infraction,
2 eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section
4 17556 of the Government Code, or changes the definition
5 of a crime within the meaning of Section 6 of Article
6 XIII B of the California Constitution.

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